IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

DR. JEROME SMITH
Plaintiff

V. No. 1:97-CV-226-B-D

BOARD OF TRUSTEES OF THE OKOLONA MUNICIPAL SEPARATE SCHOOL DISTRICT; W. HOWARD GUNN, EDDIE BRASFIELD, GEORGE MAYFIELD, WILLIAM RANDLE, and LYNN FAIR, In Their Capacity as Board Members; and GERALD HEGAN, Individually and in his Capacity as Superintendent
Defendants

MEMORANDUM OPINION

This cause comes before the court upon the defendants' motion for summary judgment. Upon due consideration of the parties' memoranda and exhibits, the court is ready to rule.

FACTS

The plaintiff, a black male, served as principal of Okolona High School from 1994-1997 (three school years). He has a Ph.D. and had worked for the Okolona School District for 26 years by the expiration of the 1996-1997 school year. The plaintiff has AAAA certification from the State of Mississippi in Biology and Science and AA certification in Administration.

The defendant Gerald Hegan, a white male, holds a master's degree and AA certification, presumably in Administration. He was appointed superintendent of the Okolona School District in August of 1996 by a three-two vote of the school board. The board's vote was split along racial lines. The outgoing superintendent had recommended Larry Dantzler for the job of

superintendent. Dantzler, a black male, was the assistant superintendent at the time. According to the plaintiff, Dantzler had more experience and was more qualified for the job than Hegan. The plaintiff asserts that he openly and publicly opposed Hegan by attending meetings in support of Dantzler.

After a less than satisfactory evaluation of the plaintiff on February 5, 1997, defendant Hegan informed the plaintiff on February 17, 1997, that his contract of employment would not be renewed. Pursuant to the School Employment Procedures Act ("SEPA"), the plaintiff requested a list of reasons for his non-renewal and a hearing. The hearing was held on May 2, 13 and 20, 1997, before a local attorney, Michael Malski. The plaintiff was allowed to put on evidence and cross-examine the district's witnesses. Malski submitted a Report and Recommendation to the school board, dated May 30, 1997, recommending that the non-renewal be upheld. After oral argument before the school board on June 23, 1997, the board voted to accept the Report and Recommendation. The plaintiff subsequently filed suit for racial discrimination, violation of his First Amendment right to free speech, violation of due process, violation of the School Employment Procedures Act, violation of the defendants' personnel appraisal process, and violation of established policies, practices, and procedures of the school district.

LAW

On a motion for summary judgment, the movant has the initial burden of showing the absence of a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 325, 91 L. Ed. 2d 265, 275 (1986) ("the burden on the moving party may be discharged by 'showing'...that there is an absence of evidence to support the non-moving party's case"). Under Rule 56(e) of the Federal Rules of Civil Procedure, the burden shifts to the non-movant to "go beyond the

pleadings and by...affidavits, or by the 'depositions, answers to interrogatories, and admissions on file,' designate 'specific facts showing that there is a genuine issue for trial.'" Celotex Corp., 477 U.S. at 324, 91 L. Ed. 2d at 274. That burden is not discharged by "mere allegations or denials." Fed. R. Civ. P. 56(e). All legitimate factual inferences must be made in favor of the non-movant. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255, 91 L. Ed. 2d 202, 216 (1986). Rule 56(c) mandates the entry of summary judgment "against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." Celotex Corp., 477 U.S. at 322, 91 L. Ed. 2d at 273. Before finding that no genuine issue for trial exists, the court must first be satisfied that no reasonable trier of fact could find for the non-movant. Matsushita Elec. Indus. v. Zenith Radio Corp., 475 U.S. 574, 587, 89 L. Ed. 2d 538, 552 (1986).

To present a prima facie case of racial discrimination under Title VII, the plaintiff may show: (1) that he was a member of a protected class; (2) that he was qualified for the position held; (3) that he was subject to an adverse employment decision; and (4) that he was replaced by someone outside of the subject classification. Meinecke v. H&R Block, 66 F.3d 77, 83 (5th Cir. 1995); Marks v. Prattco, Inc., 607 F.2d 1153, 1155 (5th Cir. 1979). A plaintiff may always present a prima facie case by offering direct evidence of discrimination, in which case the four-part test developed for circumstantial evidence is unnecessary. Lee v. Russell County Bd. of Educ., 684 F.2d 769, 774 (5th Cir. 1982). Once the plaintiff presents a prima facie case, the defendant must articulate a legitimate, non-discriminatory reason for the employment action. McDonnell-Douglas Corp. v. Green, 411 U.S. 792, 802-805, 36 L. Ed. 2d 668, 677-679 (1973). If the defendant is able to do so, the burden of production shifts back to the plaintiff to produce

evidence that the defendant's articulated reason is merely a pretext for discrimination. Id.

The plaintiff makes three arguments in his attempt to establish racial discrimination. First, the plaintiff asserts that Hegan's appointment to the position of superintendent was tainted with racial discrimination. However, the plaintiff was not a candidate for the position of superintendent. Any racial bias in the selection of Hegan has no application to the plaintiff's claim of racial discrimination in the non-renewal of his contract as principal of Okolona High School. Second, the plaintiff asserts that the "cleaning house"[1] approach of Hegan had a disparate impact on black administrators. However, the court finds that the disparate impact analysis is inappropriate in this type of case involving alleged individual discrimination. The disparate impact analysis would be more appropriate in a situation where the school district's racially neutral employment requirements had a disparate impact on the number of blacks who were qualified for positions.

Finally, the plaintiff asserts that an incident involving a post card sent from Hegan to the plaintiff presents direct evidence of a discriminatory bias. A few months[2] after Hegan had recommended that the plaintiff's contract not be renewed, Hegan received a post card with a picture of a smiling monkey, wearing a graduation cap, and the caption "WHAT? You've

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[1] Apparently, all of the top administrators in the Okolona School District were let go after the 1997 school year, including the principals at Okolona High School and Okolona Elementary School and the director of the Okolona Vo-Tech Complex.

[2] Neither party provides an exact date for the post card incident and the postmark on the copy of the envelope sent to the plaintiff is illegible, but the defendant Hegan indicates in his deposition that the post card incident occurred in July of 1997.

NEVER been to Harvard?" On the flip side of the card were the words "Ha. Ha. But we have."[3] The defendant Hegan believed that the card had been sent from the plaintiff and Dan Rupert, who were apparently in Boston at the time. Rupert, a white male, was the principal of Okolona Elementary School, and his contract, like that of the plaintiff, had not been renewed for the coming year. Hegan testified that he took the card as a joke, as did the office employees, who were laughing and teasing him about the card. In response, he wrote the words "I recognized you immediately! Glad you're looking so happy and rested." below the picture of the monkey. Hegan left the card on his desk and his secretary, of her own accord, sent a copy of the card with the added words to both the plaintiff and Rupert.[4] The plaintiff contends that the words written by the defendant Hegan show discriminatory animus towards the plaintiff. However, the court finds that the post card is not sufficient to establish a prima facie case of racial discrimination. All of the evidence indicates that the words were written merely as a joke, towards both a black and a white administrator, with no offense intended. A copy of the card was mailed by the secretary to both the plaintiff and Rupert. Furthermore, all of this took place long after Hegan had made the decision to not renew the plaintiff's contract. Accordingly, considering all of the evidence before the court, the court finds that the incident with the post card is insufficient to allow the plaintiff to survive summary judgment on the issue of racial discrimination.

To establish a prima facie claim of a violation of the plaintiff's First Amendment rights,

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[3] The court is unsure whether these words were printed by the creator of the card or written by the sender, as the flip side of the card was not submitted as an exhibit.

[4] The plaintiff questions the extent of defendant Hegan's involvement in mailing the card. However, both Hegan and his secretary have stated under oath that the secretary mailed the card of her own accord and the plaintiff has provided no evidence to the contrary.

the plaintiff must show that his conduct is constitutionally protected and that it was a substantial or motivating factor in the school district's decision not to renew his contract. Day v. South Park Indep. Sch. Dist., 768 F.2d 696, 700 (5th Cir. 1985), cert. denied, 474 U.S. 1101 (1986); Lindsey v. Mississippi Research and Dev. Ctr., 652 F.2d 488, 492 (5th Cir. Unit A, Aug. 1981). The plaintiff has failed to establish any evidence of a causal connection between the protected activity (supporting Dantzler for the superintendent position) and the adverse employment action (failure to renew the plaintiff's contract). When asked how Hegan would have known of the plaintiff's support for Dantzler, the plaintiff testified that he attended one or more meetings at the Okolona Auditorium in support of Dantzler. However, the plaintiff admits that Hegan was not present at any of the meetings he attended. The plaintiff acknowledged that he never made a speech or wrote an article on behalf of Dantzler and never told Hegan that he supported Dantzler for the position. The only "evidence" the plaintiff has that Hegan ever knew of the plaintiff's support for Dantzler is the plaintiff's mere speculation that Hegan would have known of the plaintiff's feelings through some of the board members. The court finds that the plaintiff has not presented sufficient evidence of a causal connection between the protected activity and the adverse employment action to survive summary judgment on his First Amendment claim.

The court likewise finds that the plaintiff cannot establish a violation of due process under the Fourteenth Amendment. SEPA provides limited due process rights to certified public school district employees, including principals. SEPA requires the school district to furnish written notice of the reasons for non-renewal of an employment contract and an opportunity for a post-non-renewal hearing before a fair and impartial board or hearing officer. Housley v. North Panola Consol. Sch. Dist., 656 F. Supp. 1087, 1091 (N.D. Miss. 1987); DeSoto County Sch. Bd.

V. Garrett, 508 So. 2d 1091, 1093 (Miss. 1987). The evidence is undisputed that the plaintiff received both notice of the reasons for his non-renewal and a hearing before an impartial hearing officer where the plaintiff was permitted to present evidence and witnesses in his behalf, as well as cross-examine witnesses presented by the school district. Accordingly, the court finds that the plaintiff has failed to establish any violation of his due process rights under the Fourteenth Amendment.

The plaintiff further contends that the defendants violated SEPA by not notifying him of the board's decision within 30 days of the conclusion of the hearing. Miss. Code Ann. § 37-9-111(4). The plaintiff asserts that the hearing provided pursuant to the provisions of SEPA concluded on May 20 and that he was not notified of the board's final decision until June 26, over 30 days later. However, the court finds that the hearing officially concluded on May 30, 1997. The hearing officer has filed an affidavit stating that it was his intention to close the hearing on May 30, as was stated in his Report and Recommendation. Obviously, any decision issued on June 23 would be within 30 days of May 30. Furthermore, the decision to hold oral argument before the board on June 23 was made after consulting with plaintiff's counsel, who agreed to the date without raising an objection as to the 30-day requirement. Plaintiff was represented by counsel at the hearing before the board and no objection was made at that time as to the running of the 30-day period. The court finds that the plaintiff's failure to raise the 30-day issue when scheduling the oral argument or during the oral argument precludes the plaintiff from asserting a violation of the statute now. Finally, even if the defendants have committed a technical violation of the statute, so long as there was a substantial and manifestly good faith attempt by the board to comply with the Act and the employee was represented by counsel,

procedural defects will not render the board's actions unlawful. See Cox v. Thomas, 403 So. 2d 135, 137-138 (Miss. 1981). For that reason as well, the court finds that there has been no violation of the statute.

Finally, the plaintiff contends that the defendants violated the established policies, practices, and procedures of the school district in one or more ways, including not following the exact letter of the school district's personnel appraisal process. The court finds that the plaintiff has failed to cite any authority for such a cause of action against the school district, and therefore the plaintiff's claims for violation of various school policies should be dismissed.

CONCLUSION

For the foregoing reasons, the court finds that the defendants' motion for summary judgment should be granted. An order will issue accordingly.

THIS, the ____ day of April, 2001.

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NEAL B. BIGGERS, JR.
CHIEF JUDGE